

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
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Implementation of the Satellite Home
Viewer Improvement Act of 1999;
Retransmission Consent Issues)
_____)

CS Docket No. 99-363

To: The Commission

SUPPLEMENTAL INFORMATION

EchoStar Satellite Corporation ("EchoStar") hereby submits certain additional information material to the Commission's implementation of Satellite Home Viewer Improvement Act's good faith requirement, 47 U.S.C. § 325(b), that is the subject matter of the captioned rulemaking.¹ Specifically, EchoStar submits further concrete evidence of many broadcasters' unfortunate inclination to make demands that in EchoStar's view run afoul of the good faith requirement of the statute in retransmission negotiations. This evidence takes the problems that the Commission is called on to address from the academic level to the level of EchoStar's day-to-day experiences in the retransmission marketplace.

¹ Act of Nov. 29, 1999, PL 106-113, § 1000(9), 113 Stat. 1501 (enacting S. 1948, including the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"), Title I of the Intellectual Property and Communications Omnibus Refort Act of 1999 ("IPACORA"), to be codified in scattered Sections of 17 and 47 U.S.C.

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To date, EchoStar has made diligent and intense efforts to secure retransmission consent from a wide variety of broadcasters with stations in many regions of the country, including Missouri, Texas, North Carolina, California, Georgia, Washington, Colorado, Massachusetts, New Mexico, Nevada, Utah, Oregon, Rhode Island, Connecticut, Michigan, Florida, Minnesota, and the District of Columbia. EchoStar has requested consent from isolated stations as well as some of the largest groups of broadcast properties in the country. With very few exceptions, these broadcasters are all demanding significant monetary compensation in exchange for that consent, ranging from 10, 15 or 30 cents in relatively few cases to a typical requirement of 50 cents per subscriber per month. EchoStar believes that these same broadcasters have not requested and do not receive any cash payment in exchange for their retransmission consent from cable operators, and none has provided EchoStar with any proof that this dramatic difference in terms is due to competitive marketplace considerations.

In addition, almost invariably, the broadcasters that EchoStar has approached will not grant retransmission consent unless EchoStar agrees to a condition prohibiting entirely the importation of distant signals into their designated market areas (“DMAs”), even to unserved households within that area and even though such importation is expressly permitted by the SHVIA.² Moreover, several broadcasters, including broadcasters in Michigan and Georgia, also prohibit or significantly restrict the export of their signals outside their DMAs. In short, these

² For example, broadcasters in Missouri, Texas, Washington, North Carolina, Michigan and New Mexico require a \$.50 monthly subscriber fee *and* a ban on the importation of distant signals. One major broadcast group has demanded a retransmission fee equal to \$.50 per subscriber per month for the average number of subscribers who have received local service at any time during a month in addition to a ban on the delivery of any station’s signal outside its DMA and a provision that any station may unilaterally terminate the agreement at any time on or after the FCC’s ‘must-carry’ regulations become effective.

broadcasters are trying to use the local-into-local retransmission consent requirement as leverage to nullify the copyright license for retransmission of distant signals.

Furthermore, a few stations, notably broadcasters in North Carolina and Connecticut, are demanding local retransmission of additional stations as a condition to their consent - a particularly onerous requirement given that EchoStar must devote one *nationwide* channel for each additional station – not just local capacity.³

In a few cases, broadcasters are demanding monetary compensation other than a monthly subscriber fee. For example, one large broadcaster in California is requesting that EchoStar sponsor a “Leadership Award” in the amount of \$125,000 per year as well as commit 40% of its local advertising budget to that broadcaster’s stations in the relevant DMAs. Another broadcaster in Texas is seeking an annual advertising commitment from EchoStar of \$250,000 per station, as an alternative to its requested 50 cent per subscriber per month fee. One other major broadcaster with stations across the country is requesting a \$.50 per subscriber per month fee or a reduced fee plus an unspecified “bounty” from all EchoStar hardware sales resulting from that broadcaster’s referral.

As EchoStar demonstrated in its comments, such onerous terms and conditions are well beyond those which cable operators have obtained for the retransmission of local signals.⁴ They are also well beyond anything that could be considered to be based on

³ In the case of the broadcaster from North Carolina, EchoStar would have to accept such a condition in return for an unspecified reduction in the amount of the monthly per subscriber fee. In the case of the Connecticut broadcasters, the carriage requirement would be on top of an unreduced monthly per subscriber fee.

⁴ Comments of EchoStar, 2-9 (filed Jan. 12, 2000).

competitive marketplace considerations – the underlying requirement for differential terms and conditions in the statute itself.⁵ In other words, EchoStar’s experience to date strongly indicates that local broadcasters are attempting to leverage their significant market power to gain an anti-competitive advantage. The Commission must not permit the broadcasters to do so.

Additionally, and even more ominously, one broadcaster has refused outright to offer EchoStar retransmission consent on any terms. According to this broadcaster, EchoStar has “stolen” its signal in the past and now it is its “turn” to “make things hard” on EchoStar. This position confirms EchoStar’s view, articulated in its comments, that broadcasters are using – and will continue to use – baseless allegations as an excuse to withhold their retransmission consent.⁶ The Commission must make absolutely clear that such blatant refusals to deal are anti-competitive and thus strictly prohibited.

⁵ SHVIA, to be codified at 47 U.S.C. § 325(b).

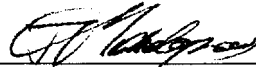
⁶ Comments of EchoStar, 20-21; Reply Comments of EchoStar, 16-20 (filed Jan. 21, 2000).

Respectfully submitted,

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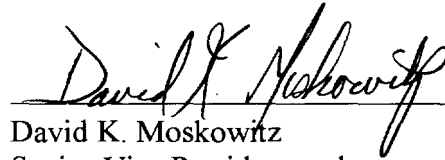

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Dated: February 11, 2000

DECLARATION

I, David K. Moskowitz, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "David K. Moskowitz", is written over a horizontal line.

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